



**DISTRICT ATTORNEY  
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**Eric Gonzalez**  
District Attorney

[INSERT NAME]  
Assistant District Attorney

[INSERT DATE]

[INSERT D/C INFO]

Re: [INSERT CASE NAME]  
Kings County Dkt./Ind. No. [#####]

In connection with the above-named case, the People voluntarily provide the following information regarding:

**MOS NAME: MELORE, SALVATORE**

**MOS TAX: 952004**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

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**Disclosure # 1:**

The People are aware of the following federal civil rights action(s) and/or state tort civil lawsuit(s) in which the indicated officer has been named as an individual defendant. Note, the disposition information may not be current:

PLAINTIFF	DOCKET	COURT	FILED	DISPOSED	DISPOSITION
Lakee McKinney	19-CV-1089	E.D.N.Y.	2-22-19	-	Pending, settlement conference scheduled for 10/30/2019
Elijah Alexander	511919/2018	Sup. Ct., Kings Cty.	8-6-18	-	Pending(?)
Brandon Nathaniel, et al.	16-CV-256	E.D.N.Y.	1-18-16	9-6-17	Judgment in favor of defendants, on the pleadings, pursuant to Fed. R. Civ. P. 12(c)
Christopher Partlow	15-CV-3443	E.D.N.Y.	6-12-15	9-6-16	Judgment pursuant to Fed. R. Civ. P. 68, without admission of liability or damages

**Disclosure # 2: (SEE BELOW)**

CCRB DOCUMENTS ATTACHED. THE CCRB DOCUMENTS RELATE TO AND ARE REFERENCED IN ONE OF THE CIVIL SUITS AGAINST MELORE.

Eric Gonzalez  
District Attorney  
Kings County

**CCRB INVESTIGATIVE RECOMMENDATION**

Investigator Assigned: Greg Finch	Team: Squad #14	CCRB Case # : 201607556	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> Courtesy <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Date/Time of Incident: Sat, 08/27/2016 12:25 AM	Location of Incident: Front of 201 Pulaski Street		Pct. of Occurrence: 79	Date S.O.L. Expires: 02/27/2018
Date/Time C/V Reported: Sat, 08/27/2016 12:31 AM	C/V Reported At: IAB		How C/V Reported: Phone	Date/Time Received at CCRB: Thu, 09/01/2016 10:58 AM

Complainant/Victim	Type	Home Address		
1. Lakee McKinney	Comp/Victim	201 Pulaski Street 3B, Brooklyn, NY, 11206		
<b>Witness(es)</b>		<b>Home Address</b>		
1. Rebecca McCalla		201 Pulaski Street 3B, Brooklyn, NY, 11206		
2. Craig Gaddy		92 Herkimer Street Brooklyn, NY, 11216		
3. William Glasgow		202 Pulaski Street #2, Brooklyn, NY, 11216		
4. Skylinn Quinones		1273 Pacific Street Brooklyn, NY, 11216		
5. Destinee Thomas		946 St. Marks Avenue Apt. 4A, Brooklyn, NY, 11213		
Subject Officer(s)	Shield	TaxID	Command	
1. POM Gerard Cash	18279	951594	PBBN SU	
2. POM David Mercado	11610	952007	PBBN SU	
3. POM Salvatore Melore	02092	952004	PBBN SU	
Officer(s)	Allegation			Recommendation
A. POM David Mercado	Abuse of Authority: Police Officer David Mercado stopped Lakee McKinney.			A. Substantiated
B. POM Gerard Cash	Abuse of Authority: Police Officer Gerard Cash stopped Lakee McKinney.			B. Substantiated
C. POM Salvatore Melore	Abuse of Authority: Police Officer Salvatore Melore stopped Lakee McKinney.			C. Substantiated
D. POM David Mercado	Force: Police Officer David Mercado used physical force against Lakee McKinney.			D. Substantiated
E. POM David Mercado	Force: Police Officer David Mercado used a chokehold against Lakee McKinney.			E. Substantiated
F. POM David Mercado	Force: Police Officer David Mercado restricted Lakee McKinney's breathing.			F. Substantiated
G. POM David Mercado	Abuse of Authority: Police Officer David Mercado frisked Lakee McKinney.			G. Substantiated
H. POM Gerard Cash	Abuse of Authority: Police Officer Gerard Cash frisked Lakee McKinney.			H. Substantiated
I. POM Gerard Cash	Abuse of Authority: Police Officer Gerard Cash searched Lakee McKinney.			I. Substantiated
J. POM David Mercado	Abuse of Authority: Police Officer David Mercado refused to provide his name and shield number to Lakee McKinney.			J. Substantiated

CCRB - Confidential

**CCRB INVESTIGATIVE RECOMMENDATION**

<b>Officer(s)</b>	<b>Allegation</b>	<b>Recommendation</b>
K. POM Gerard Cash	Abuse of Authority: Police Officer Gerard Cash refused to provide his name and shield number to Lakee McKinney.	K. Substantiated
L. POM Salvatore Melore	Abuse of Authority: Police Officer Salvatore Melore refused to provide his name and shield number to Lakee McKinney.	L. Substantiated
M. POM David Mercado	Force: Police Officer David Mercado used physical force against Lakee McKinney.	M. Exonerated
N. POM Gerard Cash	Force: Police Officer Gerard Cash used physical force against Lakee McKinney.	N. Exonerated
O. POM David Mercado	Force: Police Officer David Mercado used a chokehold against Lakee McKinney.	O. Unsubstantiated
P. POM David Mercado	Force: Police Officer David Mercado restricted Lakee McKinney's breathing.	P. Unsubstantiated
Q. POM David Mercado	Other: Police Officer David Mercado failed to prepare a stop and frisk report as required.	Q. Other Misconduct

#### Case Summary

On August 27, 2016, Lakee McKinney filed a complaint via telephone with IAB generating log #16-30707. The CCRB received the case on September 1, 2016.

On August 27, 2016, at approximately 12:25 a.m. Lakee McKinney was standing on the northwest corner of Throop Avenue and Pulaski Street in Brooklyn waiting for his girlfriend, Destinee Thomas. Police Officer David Mercado, Police Officer Gerard Cash and Police Officer Salvatore Melore of Patrol Borough Brooklyn North Specialized Unit approached the northwest corner of the intersection in an unmarked RMP. PO Cash parked the RMP and PO Mercado exited the RMP and stopped Mr. McKinney (Allegations A, B and C). PO Mercado allegedly punched Mr. McKinney (Allegation D). PO Mercado held Mr. McKinney against a crosswalk pole, and allegedly held his forearm against Mr. McKinney's neck, causing his breathing to be restricted (Allegations E and F). PO Melore and PO Cash exited the RMP then approached. PO Mercado frisked Mr. McKinney (Allegation G). PO Cash allegedly frisked and searched Mr. McKinney (Allegations H and I). After PO Mercado released him, Mr. McKinney asked all three officers for their name and shield numbers, and they allegedly did not respond (Allegations J, K and L). Mr. McKinney held the door of the RMP, and in response PO Mercado and PO Cash pushed Mr. McKinney back towards the sidewalk (Allegations M and N). Mr. McKinney alleged that during this push, PO Mercado choked Mr. McKinney and restricted his breathing (Allegations O and P). Officers reentered the RMP and drove away. Approximately five minutes later, officers returned to the intersection to speak with Mr. McKinney's mother, Rebecca McCalla, and provided their names and shield numbers to her. PO Mercado did not prepare a stop and frisk report for the incident (Allegation Q) (BR 01).

No video footage was available for this incident.

APU Prosecutor Raasheja Page was consulted during the investigation of this case.

This case exceeded the 90-day benchmark by two weeks due to scheduling difficulties with the witnesses in this case.

#### Mediation, Civil and Criminal Histories

- Mr. McKinney declined the option of mediation.
- As of November 23, 2016, there has been no Notice of Claim filed with the NYC Comptroller's office regarding this incident (BR 03).
- Mr. McKinney has no prior arrests in BADS, and without a NYSID number the undersigned investigator could not perform searches for previous convictions in the Office of Court Administration database (BR 04).

#### Civilian and Officer CCRB Histories

- Mr. McKinney does not have any prior CCRB complaints (BR 05).
- PO Mercado has been a member of the NYPD for four years and has four prior complaints with ten allegations (see officer history). He has two previous physical force allegations, with one closed as complainant uncooperative and one closed as complainant unavailable.
  - In case #201508826, the Board substantiated stop, frisk and search allegations, noted other misconduct for a failure to produce stop and frisk report and a failure to produce a memo book entry and recommended Charges. The NYPD

- disposition has not yet been determined.
- PO Cash has been a member of the NYPD for four years and has eight prior complaints with fourteen allegations. He has three previous physical force allegations, with two closed as complainant uncooperative and one closed as exonerated.
    - In case #201507073, the Board substantiated stop, retaliatory summons and premises entered and searched allegations, and recommended Command Discipline B and Formalized Training. CTS did not contain the NYPD disposition.
  - PO Melore has been a member of the NYPD for four years and has four prior complaints with eight allegations. No allegations were substantiated and none were relevant to this case.

#### Potential Issues

- No video footage was available for this incident as the CCRB Field Team canvas determined that no exterior video cameras covered the incident location (BR 06).
- A sworn statement was not taken from Ms. Thomas (BR 07).

#### Findings and Recommendations

##### Explanation of Subject Officer Identification

Mr. McKinney initially attributed the search to PO Mercado; however, when questioned further he admitted that he had difficulty attributing the actions of the search to specific officers because he was physically interacting with multiple officers (BR 08). For example, Mr. McKinney was unsure which officer patted down his torso. The civilian with the best view of the search was William Glasgow, who stood ten feet away from the stop on the same sidewalk with no visual obstruction (BR 09). Mr. Glasgow alleged that as one officer used two arms against Mr. McKinney's chest to hold him against the crosswalk pole, another officer inserted his hand into Mr. McKinney's right pants pocket and removed an object. PO Mercado held Mr. McKinney during the stop. No officer or civilian alleged that PO Melore searched Mr. McKinney during this incident. By process of elimination, the investigation identified this second officer as PO Cash. Therefore the search allegation is pled against PO Cash.

Allegation A – Abuse of Authority: Police Officer David Mercado stopped Lakee McKinney.

Allegation B – Abuse of Authority: Police Officer Gerard Cash stopped Lakee McKinney.

Allegation C – Abuse of Authority: Police Officer Salvatore Melore stopped Lakee McKinney.

Allegation G – Abuse of Authority: Police Officer David Mercado frisked Lakee McKinney.

Allegation H – Abuse of Authority: Police Officer Gerard Cash frisked Lakee McKinney.

Allegation I – Abuse of Authority: Police Officer Gerard Cash searched Lakee McKinney.

It is undisputed that PO Mercado, PO Cash and PO Melore stopped Mr. McKinney, and that PO Mercado frisked Mr. McKinney.

According to Mr. McKinney, he was standing on the northwest corner of Throop Avenue and Pulaski Street in Brooklyn on his cell phone texting his girlfriend, Ms. Thomas, who he was waiting for to arrive in a cab (BR 08). Mr. McKinney was texting with his right hand with his left hand in his pocket, and was wearing a fitted green shirt and tight pants with no bulges. A black unmarked RMP pulled up to the northwest corner of the intersection and officers exited the

vehicle. PO Mercado approached Mr. McKinney and said, "Oh hey." Mr. McKinney said, "Who are you?" Mr. McKinney did not turn away from any officer, and no officer issued any commands or identified themselves to Mr. McKinney. Three seconds after exiting the RMP, PO Mercado punched Mr. McKinney in the chest, grabbed his arm and pulled him. Mr. McKinney shook loose to free himself from PO Mercado's grasp. PO Mercado pinned Mr. McKinney against a crosswalk pole with the assistance of PO Cash and PO Melore. Mr. McKinney said, "Who are you, why are you doing this, why are you doing this to me?" At this point, Mr. McKinney was able to see PO Mercado's shield and realized these were police officers. PO Mercado patted Mr. McKinney's groin area, his legs and his ankles. Mr. McKinney described that PO Mercado inserted his hand into Mr. McKinney's left pants pocket, and Mr. McKinney was unsure if PO Mercado patted his right pants pocket or inserted his hand inside. However, as discussed in the Explanation of Officer Identification section, the investigation concluded that it was PO Cash who searched Mr. McKinney. Mr. McKinney believed that either PO Cash or PO Mercado patted down his torso, but was unsure which officer it was. At no point did Mr. McKinney strike or hit any officer, and PO Mercado's pat down and search of Mr. McKinney lasted thirty seconds. At no point did any officer ask Mr. McKinney to remove his hand or hands from his pockets. After search ended, all three officers let go of Mr. McKinney and walked towards the unmarked RMP. PO Mercado said to Mr. McKinney, "We're looking for a person with a gun."

According to Mr. Glasgow, he passed Mr. McKinney on the northwest corner of the intersection moments before the stop, and was ten feet away from the stop as it occurred (BR 09). Mr. Glasgow is Mr. McKinney's neighbor and had not met him before this incident. Mr. Glasgow said that Mr. McKinney was not the only civilian on the four corners of Throop Avenue and Pulaski Street, and estimated that four or five civilians were in the immediate area at the time of the stop. Mr. McKinney was holding a cell phone in his right hand, and Mr. Glasgow was unsure if Mr. McKinney's left hand was in his pocket. After walking north past Mr. McKinney on the west side of Throop Avenue, Mr. Glasgow heard the RMP stop and voices behind him, and by the time he turned around PO Mercado and PO Cash had already pushed Mr. McKinney up against the crosswalk pole on the corner. Mr. McKinney's arms were stretched up and away from his body as he was frisked and searched by PO Cash. PO Cash patted down Mr. McKinney's shirt and legs and inserted his hand into Mr. McKinney's right pants pocket to remove an object before placing it back inside the pocket. The stop lasted a few minutes before PO Mercado released Mr. McKinney. Mr. McKinney did not attempt to place his hands in his pockets during the stop.

According to Reverend Craig Gaddy of the Friendship Baptist Church in Brooklyn, he was walking south on the east side of Throop Avenue towards the bodega on Throop Avenue and Pulaski Street moments before the stop (BR 10). Mr. Gaddy is Mr. McKinney's neighbor and had not met him before this incident. Mr. Gaddy counted nine individuals other than Mr. McKinney in the immediate area of the intersection of Throop Avenue and Pulaski Street. The RMP pulled up to the northwest corner of Throop Avenue and Pulaski Street and PO Mercado exited and approached Mr. McKinney. Mr. McKinney asked, "What do you want, what's the matter, what did I do?" No officer spoke to or issued any command to Mr. McKinney before or during the stop beyond saying, "Shut up." Mr. McKinney did not have his hands in his pockets at any point and Mr. Gaddy's viewing angle precluded him from seeing if Mr. McKinney attempted to walk away from PO Mercado as he approached. PO Mercado grabbed Mr. McKinney under his armpits, pushed him up against the RMP and frisked him. PO Cash and PO Melore exited the RMP and approached the stop. Mr. McKinney repeatedly asked, "Who are you? What are you doing? Why

are you doing this to me? Help – call the police.” Mr. Gaddy was unable to see the lower bodies of Mr. McKinney and the officers due to his viewing angle being blocked by the RMP.

Ms. Thomas estimated that four civilians were on the four corners of the intersection. (BR 07). Ms. Thomas was in a cab, only briefly viewed the stop, and did not see the details of any frisk or search.

According to Ms. McCalla, later that night when officers returned to apologize for the stop, PO Cash told Ms. McCalla that the reason he stopped Mr. McKinney was that he received a description of a black male standing on the corner of Dekalb Avenue with a gun (BR 11). PO Cash told Ms. McCalla that he acknowledged that, “We were wrong in the way we apprehended your child, that’s why we came back because we wanted to apologize.” PO Cash did not articulate what specifically was wrong about the stop.

According to PO Mercado’s account of the tip, as PO Cash drove through Hart Street and Throop Avenue, an older black male flagged down the unmarked RMP and told the officers, “There’s a kid on the next corner with a gun on him” (BR 12). When asked what he took the word ‘kid’ to mean, PO Mercado said, “People use the word ‘kid’ for anything” and “I guess a teenager or somebody in their twenties, somebody young.” PO Mercado did not know the tipster. PO Mercado indicated the corner the tipster referred to was at the intersection of Pulaski Street and Throop Avenue, which is one block down Throop Avenue. When asked if the tipster had come out of a building, PO Mercado said, “I don’t know, I just saw him -- it was one of those, it happened quick.” No officer further questioned the tipster regarding the information. PO Mercado estimated that ten to fifteen seconds passed between receiving the tip at Hart Street and Throop Avenue and travelling to the northwest corner of Pulaski Street and Throop Avenue.

According to PO Mercado’s account of the stop, PO Mercado observed Mr. McKinney as the only person standing on any of the four corners of Pulaski Street and Throop Avenue. PO Mercado observed Mr. McKinney “maybe for a couple of seconds, just trying to see all four corners upon approaching the intersection, if this was credible or not.” PO Mercado did not recall how Mr. McKinney was dressed. PO Cash pulled the RMP up to the northwest corner, where Mr. McKinney was standing. Mr. McKinney’s hands were outside of his pockets upon initial observation, but as PO Mercado exited the RMP and approached Mr. McKinney he put his right hand in his right pocket and turned his right side away from PO Mercado. Based on these actions, PO Mercado suspected Mr. McKinney of having a gun. PO Mercado did not recall if Mr. McKinney was holding a phone before or during his approach. While approaching him, PO Mercado told Mr. McKinney multiple times to remove his hand from his pocket, saying, “Let me see your hands, police, let me see your hands.”

According to PO Mercado’s account of the frisk, Mr. McKinney unintentionally walked backwards into the crosswalk pole on the northwest corner of Throop Avenue and Pulaski Street. PO Mercado grabbed Mr. McKinney’s right wrist while it was still in his right pocket. Based on Mr. McKinney’s body language, PO Mercado used his free hand to frisk Mr. McKinney’s pants pockets, waistband and inner thighs because those are areas where a firearm would be kept. The frisk concluded with negative results. Mr. McKinney physically resisted the frisk by flailing his arms, moving his body and being combative, but was unable to free himself from PO Mercado’s grip. Beyond holding his right wrist, PO Mercado did not take any physical actions to control Mr. McKinney and did not enter any of Mr. McKinney’s pockets. PO Melore and PO Cash were nearby PO Mercado, but did not touch Mr. McKinney. After reentering the RMP after the frisk, officers canvassed in the surrounding area for a man with a gun based on the tip and the tipster, to negative results.

The statements of PO Cash and PO Melore largely corroborate PO Mercado's statement, with the following exceptions and additional information. According to PO Cash, he could see the intersection of Throop Avenue and Pulaski Street but could not see Lakee McKinney at the time he received the tip (BR 13). When asked if he believed the tipster's information was credible, PO Cash said, "I had no reason to believe it was not credible." Before stopping Mr. McKinney, officers observed him for ten to fifteen seconds. PO Cash pulled up to the curb next to Mr. McKinney and said "Police, is everything alright?" Mr. McKinney looked nervous, wouldn't make eye contact with officers and looked west down Pulaski Street, which gave PO Cash the impression that Mr. McKinney would run away. PO Cash did not recall what Mr. McKinney was wearing. Mr. McKinney started screaming and physically resisted PO Mercado's frisk by repeatedly attempting to put his hands back into his pants pockets. Mr. McKinney did not lean against nor was he placed against any object during the frisk. By the time PO Cash approached PO Mercado and Mr. McKinney and stood less than five feet from them, the frisk had concluded. PO Cash and PO Melore neither frisked nor touched Mr. McKinney during this first part of the incident. PO Cash stated that the tip and Mr. McKinney's behavior were the sole factors contributing to officers' suspicion that Mr. McKinney had a weapon.

According to PO Melore, the tipster pointed at the intersection of Throop Avenue and Pulaski Street when he said, "There's a kid over there on the corner with a gun" (BR 14). No officer asked further questions of the tipster because of the time-sensitive nature of the information. PO Melore could see the intersection, but his view was obstructed by cars on the street. Mr. McKinney wore a white shirt and green pants, and as the RMP pulled up, PO Cash and PO Mercado identified themselves as police officers to Mr. McKinney. Officers did not wait to observe Mr. McKinney due to the time-sensitive nature of the tip. Mr. McKinney looked around and further bladed his body clockwise with his right hand remaining in his right pants pocket. PO Melore did not recall if Mr. McKinney took any steps, where Mr. McKinney's left hand was or if Mr. McKinney held a cell phone. Mr. McKinney cursed and refused to remove his hand from the pocket while continuing to blade his body clockwise. PO Melore and PO Cash exited the RMP and approached the stop. PO Melore stood a foot behind PO Mercado during the frisk, and PO Cash stood behind and to the right of PO Mercado. PO Melore was unable to see if PO Mercado held Mr. McKinney by his wrist during the frisk. PO Melore did not recall if Mr. McKinney attempted to put his hands in his pockets or use his hands to push PO Mercado's hands away. PO Melore recalled a crosswalk pole on the corner near the stop but did not recall if Mr. McKinney made contact with the crosswalk pole during the stop. PO Melore did not recall if PO Cash touched Mr. McKinney. PO Melore stated that the intersection was located in a high-crime area.

Due to the independent nature of the witness testimonies, the investigation credits the civilian accounts over those of the officers, and credits that multiple individuals were on the four corners of the intersection. This is most directly evidenced by the statement of Mr. Glasgow, who walked past Mr. McKinney moments before the stop. As discussed in the Explanation of Officer Identification section, Mr. Glasgow was the civilian with the clearest view of PO Mercado's and PO Cash's actions during the stop. The investigation credits Mr. McKinney's claim that the plainclothes officers did not identify themselves or issue any commands to Mr. McKinney on approach, as corroborated by the witness statements of Mr. Gaddy and Mr. Glasgow. The only witness who viewed PO Mercado's approach of Mr. McKinney was Mr. Gaddy. That Mr. Glasgow and Mr. Gaddy were not acquaintances with Mr. McKinney before this encounter strengthens their credibility as witnesses.

In order for a stop to be justified, an officer must have a reasonable suspicion that a

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person is committing, has committed or is about to commit a crime. A frisk requires reasonable suspicion that a person is armed. People v. Debour, 40 N.Y.2d 210 (1976) (BR 15). Anonymous tips must be reliable in their assertions of illegality and in their tendency to identify a specific person. Florida v. J.L., 529 U.S. 266, (2000) (BR 16). A report of a crime and a description of a suspect provided to officers by an identifiable informant may provide reasonable suspicion to stop an individual fitting that description in the vicinity of the reported crime. People v. Heald, 2013 N.Y. Slip Op 52101 (Dist. C. Nassau Ct.-2013) (BR 17). In order to have reasonable suspicion to stop an individual based on a description, the individual must closely match the description and be in close temporal and spatial proximity to the crime. To have probable cause that would justify a search of an individual based on information obtained from an informant, the information must pass the *Aguilar-Spinelli* test requiring a showing of the reliability of the informant and the basis of the informant's knowledge. People v. Herold, 726 N.Y.S. 2d 65, 69 (2001 – 1<sup>st</sup> Dept.) (BR 18). Behavior that is susceptible to an innocuous interpretation, even in a high crime area, is not sufficient to establish reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1994) (BR 19).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations. The *Aguilar-Spinelli* test concerns the need to establish both the credibility of an informant and the basis of that informant's information. The courts make a distinction between an anonymous and identifiable informant because an identifiable informant is inherently more reliable and trustworthy. In the immediate case the officers were dealing with an unidentified, but identifiable informant. However, they took no steps to verify the reliability of the information. They did not identify the informant. They did not inquire as to how he came to know the information about the suspect with the gun. They did not ask him for other details that could be corroborated. They did not attempt to ensure that he would participate in a show up or otherwise be available to confirm the suspect's identity. Even if the informant could be considered more reliable than an anonymous tipster due to his face-to-face interaction with the officers, the officers took no steps to verify his trustworthiness or the provenance of his information. Despite the urgency associated with the alleged crime, the officers lacked reasonable suspicion of its occurrence. Without more details about the informant and the basis of his information, the tip lacked sufficient credibility to provide reasonable suspicion for officers to stop or frisk Mr. McKinney, or provide probable cause to search Mr. McKinney.

*Florida v. J.L., Heald, and Herold* discuss how the quality and specificity of physical descriptions from a credible informant contribute to officers' suspicion. In the immediate case, the informant did not provide the officers with the suspect's gender, race, physical attributes, or clothing description, and only gave a vague, subjective reference to the suspect's age. The informant provided specifics regarding the location; however, as discussed earlier, the investigation credits that Mr. McKinney was not the sole individual on the four corners of Throop Avenue and Pulaski Street as the RMP approached the intersection. As such, the tip provided by the informant lacked sufficient specificity to provide reasonable suspicion for officers to stop or frisk Mr. McKinney, or provide probable cause to search Mr. McKinney.

Mr. McKinney's behavior as described by the officers was also insufficient to give rise to a reasonable suspicion that Mr. McKinney was armed. PO Mercado's and PO Cash's claims that Mr. McKinney refused to remove his hands upon command were not corroborated by witnesses who were deemed credible by the investigation. Furthermore, Mr. McKinney's rotating his body clockwise and his backing away as PO Mercado approached and failure to make eye contact with officers was equally susceptible to innocuous interpretation, namely, that in the absence of any

officer command or any officer identifying himself, Mr. McKinney was simply reacting to the sudden approach of a man in plainclothes. As such, this behavior was not sufficient to establish reasonable suspicion.

Although PO Mercado and PO Cash offered the tip and Mr. McKinney's behavior as reasons, the preponderance of the evidence indicate that PO Mercado and PO Cash stopped and frisked Mr. McKinney without reasonable suspicion to do so. Additionally, the preponderance of the evidence indicates PO Cash searched Mr. McKinney without probable cause to do so. It is therefore recommended that **Allegations A, B, C, G, H and I** be closed as **substantiated**.

**Allegation D– Force: Police Officer David Mercado used physical force against Lakee McKinney.**

According to Mr. McKinney, PO Mercado approached him and said, "Oh hey" (BR 08). Mr. McKinney asked, "Who are you?" Three seconds after he exited the RMP, PO Mercado punched Mr. McKinney in the chest and grabbed Mr. McKinney by his arm and pulled him. Mr. McKinney shook loose to free himself from PO Mercado's grasp. PO Mercado pinned Mr. McKinney against the crosswalk pole and punched Mr. McKinney on the lower right side of his face with a closed fist. After the incident, Mr. McKinney and Ms. McCalla travelled to the 79th Precinct stationhouse, where the desk sergeant took photos of Mr. McKinney's injuries on his face, neck and back (BR 21; BR 22; BR 23).

According to Mr. Gaddy, because of his viewing angle of PO Mercado's approach, he was unable to see if force was used against Mr. McKinney before the frisk (BR 10). After the frisk concluded and PO Mercado released Mr. McKinney, PO Mercado pushed Mr. McKinney towards the sidewalk. Mr. McKinney repeatedly asked for all three officers' names and shield numbers. PO Mercado said, "Shut up," and with his right hand punched Mr. McKinney in his neck or jaw. Mr. McKinney said, "You hit me," and PO Mercado with his right hand punched Mr. McKinney in the chest no more than five seconds after the first punch. Mr. McKinney said to nearby witnesses, "Did y'all see that?" Mr. McKinney did not grab or strike officers to attempt to do so during the incident.

According to Mr. Glasgow, he didn't see PO Mercado approach Mr. McKinney (BR 09).

According to Ms. Thomas, after the stop Mr. McKinney had red bruising on the side of his face and lip (BR 07).

According to Ms. McCalla, later that night when officers returned to apologize, Mr. McKinney declined to speak to the officers, saying to them, "You didn't talk to me when you approached me, you pinned me up and you punched me in my face" (BR 11). The officers did not respond to what Mr. McKinney alleged, and told him to calm down.

According to PO Mercado, as he approached Mr. McKinney he told him multiple times to remove his right hand from his right pants pocket, saying, "Let me see your hands, police, let me see your hands" (BR 12). Mr. McKinney unintentionally walked backwards into the crosswalk pole on the northwest corner. PO Mercado grabbed Mr. McKinney's right wrist while it was still in his right pocket. Mr. McKinney resisted the frisk by flailing his arms and moving his body, but was unable to free himself from PO Mercado's grip. Beyond holding his right wrist, PO Mercado did not use force against Mr. McKinney. At no point did PO Mercado strike Mr. McKinney in the jaw, face or neck. PO Mercado did not observe any visible injuries on Mr. McKinney. No officer struck Mr. McKinney during the initial stop.

The statements of PO Cash and PO Melore largely corroborate PO Mercado's statement, with the following exceptions and additional information. According to PO Cash, there was

nothing in Mr. McKinney's left hand, and Mr. McKinney did not walk backwards as PO Mercado approached him (BR 13). PO Cash did not know what PO Mercado's left hand was doing during this time. PO Cash did not punch Mr. McKinney during the stop nor see any other officer do so. Mr. McKinney did not complain of any injuries and PO Cash did not observe any. According to PO Melore, PO Mercado did not use any physical force against Mr. McKinney and did not punch Mr. McKinney in the face or chest (BR 14). Officer accounts in the TRIs generated for this incident make no reference to this use of force (BR 30).

The investigation credits the civilian accounts over those of the officers, and concludes that PO Mercado punched Mr. McKinney in the chest and jaw during the stop. The only witness who viewed PO Mercado's approach of Mr. McKinney was Mr. Gaddy. That Mr. Gaddy and Mr. McKinney were not acquaintances before this encounter strengthens Mr. Gaddy's credibility as a witness. Factors contributing to the conclusion that PO Mercado punched Mr. McKinney are Ms. McCalla's statement that Mr. McKinney told the returning officers that he was punched and they did not respond to his allegation, Mr. Gaddy's statement that PO Mercado punched Mr. McKinney in the neck or jaw area and the chest and the photos of injury to Mr. McKinney's jawline taken at the 79th Precinct stationhouse. Although there is variation between the order of events between Mr. McKinney's and Mr. Gaddy's statements, the number and locations of the strikes are an exact match.

Force may be used to take necessary action to protect life and personal safety of all persons present, and any application of force must be reasonable under the circumstances. Patrol Guide 221-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in this allegation.

Because PO Mercado denied punching Mr. McKinney, he offered no justification for doing so. As discussed in Allegations A, B, C, G, H and I, officers did not have sufficient justification to reasonably believe that Mr. McKinney had a weapon. Furthermore, PO Mercado did not articulate any concern for his physical safety before or during the stop. Given the circumstances, PO Mercado's strikes against Mr. McKinney were unreasonable.

PO Mercado was not justified in using physical force against Mr. McKinney, specifically in punching Mr. McKinney's chest and jaw. It is therefore recommended that Allegation D be closed as **substantiated**.

**Allegation E – Force: Police Officer David Mercado used a chokehold against Lakee McKinney.**

**Allegation F – Force: Police Officer David Mercado restricted Lakee McKinney's breathing.**

According to Mr. McKinney, PO Mercado pushed his right forearm bone against Mr. McKinney's throat to pin him against the crosswalk pole (BR 08). Mr. McKinney said, "Who are you, why are you doing this, why are you doing this to me?" Mr. McKinney struggled to speak as PO Mercado's forearm restricted his breathing. After the incident, Mr. McKinney and Ms. McCalla travelled to the 79th Precinct stationhouse, where the desk sergeant took photos of Mr. McKinney's injuries on his face, neck and back (BR 21; BR 22; BR 23).

According to Mr. Glasgow, during the stop PO Mercado held Mr. McKinney against the crosswalk pole with his arms extended and palms flat against Mr. McKinney's chest (BR 09). As PO Cash frisked and searched Mr. McKinney, Mr. McKinney repeatedly asked, "What did I do?" PO Mercado said, "Stop moving, stand still." PO Mercado adjusted his hold and pressed his right forearm horizontally against Mr. McKinney's upper chest. During this motion, PO Mercado's

forearm slipped up and pressed against Mr. McKinney's throat for three to four seconds. PO Mercado appeared to have a very firm grasp of Mr. McKinney against the crosswalk pole, and PO Mercado's forearm adjustment was not in response to a change in behavior from Mr. McKinney. Mr. McKinney's stop lasted for a few minutes, and after the stop Mr. McKinney said to Mr. Glasgow that officers had choked him.

According to Mr. Gaddy, because his viewing angle was obstructed by the RMP, he could not see if additional force was used before the frisk or the details of the frisk (BR 10). Besides the punch to the jaw or neck, Mr. Gaddy did not see officers touch Mr. McKinney's neck or hear Mr. McKinney say that he couldn't breathe during the incident.

According to Ms. Thomas, after the stop Mr. McKinney had scratches and red bruising on his back (BR 07).

According to PO Mercado, Mr. McKinney unintentionally walked backwards into the crosswalk pole, and PO Mercado grabbed Mr. McKinney's right wrist while it was still in his right pocket (BR 12). PO Mercado used his free hand to frisk Mr. McKinney. Mr. McKinney physically resisted the frisk by flailing his arms, moving his body and being combative. Beyond holding his right wrist, PO Mercado did not take any physical actions to control Mr. McKinney as he was "a lot bigger than he was, so I can frisk him without him moving around too much." Mr. McKinney was unable to remove himself from PO Mercado's grip but attempted to do so. PO Melore and PO Cash were nearby PO Mercado, but PO Melore and PO Cash did not touch Mr. McKinney. When asked if he pinned Mr. McKinney to the crosswalk pole, PO Mercado said, "The only person that would be based on the position would be me, I was the only one in front of him." PO Mercado did not pin Mr. McKinney to the crosswalk pole, or touch his throat.

The statements of PO Cash and PO Melore largely corroborate PO Mercado's statement, with the following exceptions and additional information. According to PO Cash, he did not know what PO Mercado's left hand was doing during the frisk (BR 13). PO Cash could not see Mr. McKinney's right hand and was unsure how it exited his right pants pocket. Mr. McKinney started screaming and physically resisted PO Mercado's frisk by repeatedly attempting to put his hands back into his pants pockets. Mr. McKinney did not lean against and was not placed against the crosswalk pole during the frisk. According to PO Melore, he was unable to see if PO Mercado held Mr. McKinney by his wrist during the frisk (BR 14). PO Melore did not recall if Mr. McKinney attempted to put his hands in his pockets or push PO Mercado's hands away. PO Melore recalled a crosswalk pole on the corner but did not recall if Mr. McKinney made contact with it. PO Mercado did not use any physical force against Mr. McKinney and did not put his forearm up against his neck or chest.

The investigation credits the civilian accounts over those of the officers, and concludes that PO Mercado pushed the outside of his right forearm into Mr. McKinney's throat during the frisk. As discussed in Allegation C, the investigation discredits officer accounts of the force used against Mr. McKinney during the initial stop. As discussed in the Explanation of Officer Identification section, Mr. Glasgow was the civilian with the clearest view of officer actions during the stop. That Mr. Glasgow and Mr. McKinney were not acquaintances before this encounter strengthens Mr. Glasgow's credibility as a witness. Factors contributing to the conclusion that PO Mercado used a chokehold against Mr. McKinney are Mr. Glasgow's statement that PO Mercado used his forearm against Mr. McKinney's throat for at least three to four seconds to pin him against the crosswalk pole and the photos of injury to Mr. McKinney taken at the 79th Precinct stationhouse which show redness to his neck. Most significantly, the redness to his back is indicative of the level of force PO Mercado used to pin Mr. McKinney.

against the crosswalk pole.

A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Members of service shall not use a chokehold. Patrol Guide 211-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations. As PO Mercado denied making contact with Mr. McKinney's throat, he articulated no justification for doing so. He described holding Mr. McKinney with a one-handed hold of his wrist, and noted that he was "a lot bigger" than Mr. McKinney, allowing him to frisk him "without him moving around too much." Although PO Cash alleged that Mr. McKinney attempted to reach down into his pockets during the frisk, PO Mercado did not allege this and PO Melore did not see this. As such, PO Mercado's actions were unjustified.

Based on a preponderance of the evidence, the investigation concludes that PO Mercado applied pressure to Mr. McKinney's throat in a way that restricted his breathing, thus constituting a chokehold. It is therefore recommended that **Allegations E and F** be closed as substantiated.

**Allegation J – Abuse of Authority: Police Officer David Mercado refused to provide his name and shield number to Lakee McKinney.**

**Allegation K – Abuse of Authority: Police Officer Gerard Cash refused to provide his name and shield number to Lakee McKinney.**

**Allegation L – Abuse of Authority: Police Officer Salvatore Melore refused to provide his name and shield number to Lakee McKinney.**

According to Mr. McKinney's CCRB statement, after PO Mercado released him Mr. McKinney asked all three officers for their names and shield numbers three to four times (BR 08). PO Mercado said, "Officer Williams." PO Cash and PO Melore left without providing this information. Mr. McKinney also alleged this in his written complaint submitted at the 79th Precinct stationhouse (BR 24).

Mr. Glasgow and Mr. Gaddy both corroborated that Mr. McKinney repeatedly requested the officers' names and shield number, but was not provided the information. (BR 09, BR 10)

According to Ms. McCalla, when officers returned later that night to the incident location to apologize for the stop, Mr. McKinney said that he wanted the officers' shield numbers, and PO Cash wrote down all the officers' names and shield numbers and gave the information to Ms. McCalla (BR 11). PO Cash told Ms. McCalla that the officers were from the 79th Precinct.

According to PO Mercado, Mr. McKinney did not request any officer's name or shield number (BR 12). At no point did PO Mercado, PO Cash or PO Melore identify themselves as "Officer Williams." Later that night after returning to the scene of the stop, all three officers voluntarily provided their names, shield numbers and command to Ms. McCalla. No civilian requested their names or shield numbers. PO Cash and PO Melore's statements corroborate PO Mercado's with the following exception (BR 13). PO Melore was unsure if Ms. McCalla requested the officers' information after they returned to the intersection (BR 14).

The investigation credits the civilian accounts over those of the officers, and concludes that Mr. McKinney repeatedly asked all three officers for their names and shield numbers, which no officer provided. Mr. Gaddy's and Mr. Glasgow's accounts corroborate Mr. McKinney's claims that he made multiple requests and that the officers refused to provide that information. As discussed in **Allegations D, E and F**, the investigation credits Mr. Gaddy and Mr. Glasgow as independent and reliable witnesses.

Patrol Guide Procedure 203-09 states that officers must "courteously provide [their] rank,

name, shield number and command, or otherwise provide them, to anyone who requests [them] to do so and allow the person ample time to note this information" (BR 25).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

The investigation determined by a preponderance of the evidence PO Mercado, PO Cash and PO Melore refused to provide their name and shield numbers to Mr. McKinney when he requested the information. Therefore, it is recommended that **Allegations J, K and L** be closed as substantiated.

**Allegation M – Force: Police Officer David Mercado used physical force against Lakee McKinney.**

**Allegation N – Force: Police Officer Gerard Cash used physical force against Lakee McKinney.**

**Allegation O – Force: Police Officer David Mercado used a chokehold against Lakee McKinney.**

**Allegation P – Force: Police Officer David Mercado restricted Lakee McKinney's breathing.**

According to Mr. McKinney, after he asked for the officers' names the second time, he held the RMP's open driver door by the base of the window (BR 08). PO Mercado approached Mr. McKinney, placed his opened hand on Mr. McKinney's neck, pushed him backwards two to three steps and said, "Move away from the vehicle." PO Mercado squeezed Mr. McKinney's neck and Mr. McKinney tried again to ask for name and shield numbers again but was unable to speak due to PO Mercado restricting his breathing. All three officers reentered the car and drove away. At no point did Mr. McKinney grab any officer's arm.

According to Mr. Glasgow, as the officers approached the RMP to leave the scene, Mr. McKinney repeatedly asked for their name and shield numbers (BR 09). Mr. McKinney placed his body in between the open rear driver side door and the car in order to prevent the door from closing. PO Mercado pulled Mr. McKinney away from the RMP and pushed Mr. McKinney three or four feet towards the sidewalk by placing his left hand on Mr. McKinney's shoulder. PO Mercado told Mr. McKinney not to touch their vehicle. Mr. Glasgow was unsure if Mr. McKinney touched any of the officers as they attempted to reenter the RMP.

According to Mr. Gaddy, after the frisk concluded and PO Mercado released Mr. McKinney, PO Mercado pushed Mr. McKinney towards the sidewalk (BR 10). Mr. McKinney repeatedly asked for all three officers' names and shield numbers. Mr. McKinney did not grab or strike officers or attempt to do so during the incident. Besides the punch to the jaw and chest, Mr. Gaddy did not see officers touch Mr. McKinney's neck or hear Mr. McKinney say that he couldn't breathe during the incident.

According to PO Mercado, after the frisk, Mr. McKinney refused to produce his ID when it was requested and became "highly combative" (BR 12). Mr. McKinney pulled and tugged on PO Mercado and PO Cash's left arm and shoulder and stood between PO Cash and the RMP to prevent him from reentering the RMP. Later in the interview, PO Mercado said that Mr. McKinney only physically pulled on PO Cash's arm. Mr. McKinney held the RMP driver side door to prevent PO Cash from entering the RMP. PO Mercado and PO Cash simultaneously shoved Mr. McKinney on his shoulders so officers could reenter the RMP. PO Mercado instructed Mr. McKinney to "Get back." PO Mercado said that Mr. McKinney's actions constituted obstruction of governmental administration which is a crime. Beyond PO Mercado and PO Cash's shove, no officer used any additional force against Mr. McKinney during this part

of the incident. The statements of PO Cash and PO Melore largely corroborate that of PO Mercado's, with the following exceptions. According to PO Cash, he did not recall if Mr. McKinney pulled on PO Mercado's arm or if PO Mercado pushed Mr. McKinney as officers attempted to reenter the RMP (BR 13). According to PO Melore, PO Mercado pushed Mr. McKinney off of PO Cash and Mr. McKinney did not attempt to prevent PO Mercado from reentering the vehicle (BR 14).

Force may be used to take necessary action to protect life and personal safety of all persons present, and any application of force must be reasonable under the circumstances. Patrol Guide 221-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

Although it is undisputed that Mr. McKinney attempted to prevent officers' from reentering the RMP by holding the vehicle door, it is disputed what combination of PO Mercado and PO Cash pushed Mr. McKinney in response. Because both PO Mercado and PO Cash allege that they pushed Mr. McKinney, the investigation credits that both made physical contact with Mr. McKinney in response to his action.

Given the circumstances, the pushes were reasonable. The investigation concluded that Mr. McKinney physically attempted to prevent officers from reentering the RMP after the conclusion of the stop, and that PO Mercado's and PO Cash's push was brief and reasonable to allow officers to reenter the vehicle. As such, PO Mercado and PO Cash were justified in using physical force against Mr. McKinney. It is therefore recommended that Allegations M and N be closed as **exonerated**.

Due to the discrepant accounts, the investigation could not determine whether PO Mercado made contact with Mr. McKinney's neck when pushing him away from the RMP. In the absence of additional evidence to reconcile the conflicting testimonies, the investigation was unable to determine whether PO Mercado used a chokehold against Mr. McKinney or restricted his breathing during this section of the incident. It is therefore recommended that Allegations O and P be closed as **unsubstantiated**.

**Allegation Q – Other: Police Officer David Mercado failed to prepare a stop and frisk report as required.**

PO Mercado recorded Mr. McKinney's pedigree information in his memo book and noted therein that he prepared a stop and frisk report regarding the incident (BR 26). He confirmed at his interview that he prepared the report and submitted it at the 79th Precinct stationhouse (BR 12). He did not keep a copy for himself. PO Cash insisted that PO Mercado generated a stop and frisk report for this incident, which was filed by a PAA at the Patrol Borough Brooklyn North stationhouse and later submitted to the 79th Precinct (BR 13). PO Melore insisted that PO Mercado generated the stop and frisk report and submitted it at the Patrol Borough Brooklyn North stationhouse (BR 14).

The investigation could not locate any record of a stop and frisk report documenting the incident. The 79th Precinct responded to a request for said report with a handwritten note saying, "No 250 located" (BR 01). Patrol Borough Brooklyn North responded to a request for said report with a handwritten note saying, "There was no 250 prepared for a Lakee McKinney on this date" (BR 01). A database query of all stop and frisk reports generated in the 79th Precinct on the date of the incident returned two reports unrelated to this incident (BR 27). As a result, the investigation concluded that PO Mercado failed to prepare such a report.

Patrol Guide Procedure 212-11 requires that an officer create a stop and frisk report for

each person stopped (BR 28).

The investigation determined that PO Mercado did not prepare a stop and frisk report as required. Therefore it is recommended that he be cited for other misconduct.

Squad: 14

Investigator: GFS Greg Finch 14/10/16  
Signature Print Date

Squad Leader: PETER HAY PETER HAY 12/10/16  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

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